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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 3(n))
and 332 of the Communications Act)

GN Docket No. 93-252

REPLY COMMENTS OF SECURICOR PMR SYSTEMS LTD.

Securicor PMR Systems Ltd. ("Securicor PMR"), by its counsel and pursuant to Section 1.419 of the FCC's Rules, 47 C.F.R. §1.419, hereby submits its Reply Comments in the above-captioned proceeding. By its Notice of Proposed Rulemaking ("NPRM"),¹ the Commission has proposed Rules to implement the recent amendment to Section 332 of the Communications Act enacted by Title VI of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act").²

STATEMENT OF INTEREST

Securicor PMR provides and operates trunked private mobile radio systems throughout the U.K. For many years, Securicor PMR has fulfilled the internal land mobile communications needs of its parent company's, Securicor Group, large parcel delivery, cash-in-transit, security service and other fleets. As a

¹Implementation of Sections 3(n) and 332 of the Communications Act, FCC 93-454 (October 8, 1993).

²Pub. L. No. 103-66, Title VI, Section 6002(b), 107 Stat. 312, 392 (1993).

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means to enhance these operations, Securicor PMR has been an active proponent of the development of spectrally-efficient very narrowband ("VNBR") land mobile technologies.

In furtherance of its advocacy of these technologies, Securicor PMR has been a frequent participant in matters before the Radiocommunications Agency ("RA") of the U.K.'s Department of Trade and Industry looking toward the establishment of standards and rules to govern the migration of U.K. private mobile radio ("PMR") systems from their existing 12.5 kHz channelization to VNBR 5 kHz channelization. Securicor PMR also has participated in the FCC's on-going PR Docket 92-235 concerning the "refarming" of the Private Land Mobile Radio bands below 512 MHz.³

Securicor PMR's affiliated company, Linear Mobile Technology Ltd., has developed the Linear Modulation, or "LM," 5 kHz PMR system that was described by Peter Hilton, Managing Director of Securicor PMR, during the FCC's May 6, 1993 roundtable discussion on the refarming initiative. The Securicor LM system uses the very latest techniques to give superior voice quality together with, currently, 9.6kb/s high speed data in a 5 kHz channel. The LM system meets the MPT 1376 U.K. specification for 5 kHz channelization. Securicor PMR has embarked upon a program to ensure the manufacturing and distribution of LM technology throughout the U.S. and has currently entered into agreements and/or

³See Comments of Securicor PMR (May 28, 1993); Reply Comments of Securicor PMR (July 30, 1993); Supplement to Comments of Securicor PMR (September 8, 1993), PR Docket 92-235.

reached understandings with E.F. Johnson Co. and CYCOMM Corp. for these purposes.

In light of these activities, Securicor PMR is keenly interested in the instant proceeding implementing the recent amendments to Section 332 of the Communications Act regarding the definitions of commercial and private mobile radio systems. Specifically, the classification of a particular mobile service as either commercial or private will determine the specific regulatory scheme under which these services will operate. While proper classification of a service will appropriately level the regulatory playing field between similarly-situated services, misclassification of a service could result in the imposition of unnecessary regulatory burdens that may have a significant impact on the economic viability of existing services, and on the introduction of new services.

REPLY COMMENTS

Under revised section 332(d) of the Act, the determination of whether a mobile service will be classified as commercial or private turns on whether the mobile service (1) is provided on a **for profit** basis and (2) makes **interconnected service** available to the **public** or such users as to be effectively available to a substantial portion of the public. If a service satisfies both requirements, then it qualifies as a commercial mobile service. A private mobile service is one which is not a commercial mobile service or the "**functional equivalent**" of a commercial service.

Service Provided For Profit

With respect to the first element of the definition of commercial mobile service, i.e., that the service be provided on a for profit basis, Securicor PMR agrees with the Commission and those commentators who believe that Congress intended this criterion to broadly distinguish those licensees who provide service to customers on a for-profit basis from licensees who do not, such as government and non-profit public safety licensees, as well as licensees who operate systems solely for their own private, internal use.⁴ Securicor PMR also believes that the "for-profit" test should be based on whether the service as a whole is offered on a commercial basis.⁵

Regarding shared systems, Securicor PMR agrees with those commentators who believe that when costs are shared, and no licensee seeks or obtains a profit from the service, the system should be deemed not-for-profit.⁶ Securicor PMR also believes that if such a system is managed by a non-licensee on a for-profit basis, the management arrangement should not render the system for-

⁴See, e.g., Comments of GTE, p. 4; Comments of Telocator, p. 8; Comments of Motorola, Inc., p. 7; Comments of New York Department of Public Service, p. 4; Comments of Nextel Communications, Inc., pp. 7-8; Comments of Utilities Telecommunications Council, p. 5; Comments of Mobile Telecommunication Technologies Corp., p. 5.

⁵See, e.g., Comments New York Department of Public Service, p. 4; NYNEX Corporation, pp. 5-6; Comments of Cellular Telecommunications Industry Association, p. 7.

⁶See, e.g., Comments of E.F. Johnson, p. 6; Comments of Nextel Communications, Inc., p.9; Comments of Utilities Telecommunications Council, pp. 7-8.

profit. Moreover, because the non-licensee manager in the arrangement does not ultimately control any licensed facilities, the manager should not be regulated as a commercial mobile service provider.⁷

Interconnected Service

The second element of the commercial mobile service definition is whether the service makes interconnected service available to the public or such users as to be effectively available to a substantial portion of the public. Focusing on the interconnection requirement, Securicor PMR agrees with those commentators who believe that the mere fact of physical interconnection with the public switched network is insufficient to satisfy the interconnected service requirement and render the service commercial.⁸ For example, it would be inappropriate for systems which use the public switched network in a limited way, i.e., for internal or transmitter control, to be considered interconnected for purposes of the commercial mobile service definition.⁹

⁷See, e.g., Comments of E.F. Johnson, p. 6; Comments of Motorola, Inc., p. 7; Comments of Nextel Communications, Inc., p. 9, n. 14; Comments of Utilities Telecommunications Council, p. 8.

⁸See, e.g., Comments of E.F. Johnson, pp. 6-7; Comments of Geotek, pp. 7-8; Comments of GTE, pp. 5-6; Comments of Nextel Communications, Inc., p. 10.

⁹See, e.g., Comments of Telephone and Data Systems, Inc., p. 6 ; Comments of Utilities Telecommunications Council, p. 9.

Service to the Public

On the issue of how to determine whether interconnected service is available to the public or such users as to be effectively available to a substantial portion of the public, Securicor PMR concurs with those commentators who believe that, in adopting Section 332(d)(1), Congress intended to distinguish between services targeted to specific businesses, industries or user groups, and services offered indiscriminately.¹⁰ Thus, specialized services offered to such entities, even though broadly available, should not be considered available to the public or even effectively available to a substantial portion of the public.¹¹

Securicor PMR further believes that the technical characteristics of a system's operations, such as system capacity and frequency reuse, should be factors in determining whether a service is available to the public or a substantial portion thereof.¹² While all of these factors are relevant, Securicor PMR submits that system configuration in terms of frequency reuse is the clearest indicia of a system's ability to make service available to the public.

Conversely, Securicor PMR submits that a system's ability to provide only dispatch or half-duplex service would be a clear indication that the system is not configured to serve the public. Thus, for example, to the extent that systems

¹⁰See, e.g., Comments of E.F. Johnson, p. 7; Comments of Geotek, p. 3; Comments of GTE, p. 7; Comments of Motorola, Inc., pp. 8-9; Comments of Utilities Telecommunications Council, p. 11.

¹¹See, e.g., Comments of E.F. Johnson, p. 7.

¹²Id.

licensed in the 220 MHz band operate only in a half-duplex mode, such systems would automatically qualify as private given their inability to operate in a manner that makes the service publicly available.

Functional Equivalence

Under Section 332(d)(3), a private mobile service is one which is not a commercial mobile service or the functional equivalent of a commercial mobile service. As noted by the Commission, however, this provision is open to two interpretations. First, a service which falls within the literal definition of commercial mobile service could nevertheless be classified as private if the service was found not to be functionally equivalent to a commercial service. Conversely, the section could also be interpreted to mean that a service which did not meet the definition of commercial mobile service arguably could be deemed commercial if it satisfied the functional equivalence standard.

Securicor PMR agrees with the Commission and those commentators who believe that Congress intended the former, rather than the latter interpretation.¹³ Specifically, Securicor PMR believes that the Conference Report on the Budget Act makes clear that the "functional equivalence" provision of Section 332(d)(3) confers on the FCC the discretion to regulate as a private mobile service any mobile service that may fall within the literal definition of "commercial

¹³See, e.g., Joint Comments of Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc., p. 7; Comments of AMTA, p. 12; Comments of Geotek, pp. 5-7; Comments of E.F. Johnson, pp. 7-8.

mobile service" if that mobile service is not the "functional equivalent" of a commercial service.¹⁴ This interpretation, which as a practical matter expands the potential number of mobile services that could be classified as private services, is consistent with Securicor PMR's understanding of the intent of newly-amended Section 332 -- to level the regulatory playing field between similarly-situated services given the market maturation of certain private mobile services, particularly wide area, digital SMR systems.¹⁵

The second possible interpretation of newly-amended Section 332(d)(3), i.e., that the "functional equivalent" provision is intended to expand the class of commercial mobile service providers, in contrast, does not appear to be consistent with the legislative intent of the statute.¹⁶ In particular, the clear statement in the Conference Report giving the Commission discretion to "determine . . . that a mobile service offered to the public and interconnected with the public switched network is not the functional equivalent of a commercial mobile service . . ." would be rendered meaningless by the statement that a private

¹⁴H.R. Rep. No. 102-213, 103rd Cong., 1st Sess. (1993) at 496.

¹⁵See, e.g., Joint Comments of Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc., p. 7; Comments of Telocator, pp. 12-13.

¹⁶See, e.g., Joint Comments of Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc., p. 7; Comments of E.F. Johnson, pp. 7-8.

mobile service "includes neither a commercial mobile service nor the functional equivalent of a commercial mobile service."¹⁷

With respect to the specific standards which should be used to determine whether a particular mobile service is the functional equivalent of a commercial mobile service, Securicor PMR believes that the analysis should include the functionality of the services as well as customer perception of the functional equivalence of the services. Specific factors to be considered regarding functionality would include system capacity, service area size and, most importantly, frequency reuse. As noted earlier, dispatch or half-duplex operation would be a clear indication that a service is private and not the functional equivalent of a commercial service.¹⁸ Given the broad range of factors that should be considered, the issue of functional equivalence would be best determined on a service-by-service basis.

CONCLUSION

Securicor PMR commends the Commission for its efforts toward implementing revised section 332 of the Communications Act as directed by the Congress. Securicor PMR believes that these reply comments endorse

¹⁷See, e.g., Joint Comments of Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc., pp. 7-8.

¹⁸The ability of a commercial system to offer dispatch service in addition to its other service offerings would not limit the effectiveness of half-duplex operations as an indicia of private mobile service for systems which operate only in the half-duplex mode.

interpretations of definitions consistent with the intentions of Congress and with the public interest.

Respectfully submitted,

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November 23, 1993

CERTIFICATE OF SERVICE

I, Shiona H. Baum, do hereby certify that I have, on this 23rd day of November, sent via First Class United States Mail, postage prepaid, a copy of the foregoing "Reply Comments of Securicor PMR Systems Ltd." to the following:

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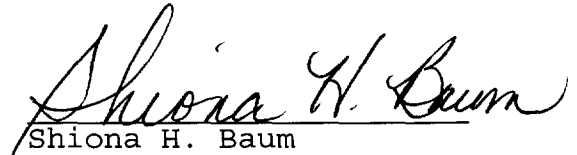
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